

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

PRO SE LITIGANT GUIDE

Office of the Clerk of Court

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INTRODUCTION

This guide is designed to assist you if (1) you want to file a lawsuit in the federal court or you have an active role, either as a plaintiff or defendant, in a case that you or someone else has filed already in federal court, and (2) you have elected to proceed without the assistance of a trained and licensed attorney.

Some basic definitions that you need to be aware of regarding commonly used "terms" in civil actions pending before this court are as follows:

Plaintiffs and defendants in court cases are generally referred to as the "parties" or "litigants." The plaintiff asserts a claim or right protected by law against the defendant; the defendant denies the claim or right, and the court determines whether the asserted claims or rights have substance or merit. The majority of litigants who appear in this court are represented by an attorney who has been trained in the law and is familiar with the applicable court rules and procedures. Parties or litigants who are not represented by licensed attorneys, who elect to represent themselves, generally are referred to as **pro se parties** or **pro se litigants**. Likewise, plaintiffs or defendants who represent themselves generally are referred to as **pro se plaintiffs** or **pro se defendants**.

This Guide will not answer all your questions about what you need to do to represent yourself effectively as a **pro se litigant**. The Guide outlines the basic steps that are required to properly file an **civil action** or lawsuit with this court. It also provides some general guidance on the next steps in the process of litigating the action once you have filed it with the clerk of court. **However, you are responsible for learning about and following the procedures that govern the court process. Although the staff of the clerk's office can provide pro se litigants with general information concerning court rules and procedures, they are forbidden, as a matter of law, from providing legal advice, from interpreting and applying court rules, or otherwise participating, directly or indirectly, in any action.**

A WORD OF ADVICE: Self-representation carries certain responsibilities and risks that pro se litigants should be aware of before they proceed. The court encourages all individuals who are thinking about pro se or self-representation to carefully review the risks associated with self-representation and to inform themselves of the potential consequences.

WARNING: Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed merely to harass someone. If after reviewing your complaint, the court determines that you have filed a lawsuit for an improper or clearly unnecessary purpose, it may impose sanctions against you, including ordering you to pay the legal fees of the person or persons against whom you filed the lawsuit.

SECTION I

IMPORTANT ISSUES YOU SHOULD CONSIDER BEFORE DECIDING TO REPRESENT YOURSELF IN AN ACTION BEFORE THE FEDERAL COURT

A. IS THIS THE FEDERAL COURT THE APPROPRIATE COURT TO HEAR YOUR DISPUTE?

The United States District Court for the Western District of North Carolina is one of 94 trial courts in the federal court system. In the State of North Carolina there are three United States District Courts which are the Eastern, Middle and Western Districts. Each district is divided by the counties of which it is statutorily comprised. **The United States District Court for the Western District of North Carolina** is divided into four (4) divisions, Asheville, Bryson City, Charlotte, and Statesville. The divisions are comprised by county as follows:

Asheville Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is an Asheville Division case: *Avery, Buncombe, Burke, Cleveland, Haywood, Henderson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania & Yancey counties.*

Bryson City Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is an Bryson City Division case: *Cherokee, Clay, Graham, Jackson, Macon & Swain counties.*

Charlotte Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is an Charlotte Division case: *Anson, Gaston, Mecklenburg & Union counties.*

Statesville Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is an Statesville Division case: *Alexander, Alleghany, Ashe, Caldwell, Catawba, Iredell, Lincoln, Watauga & Wilkes counties.*

Each of the three staffed offices in the cities of Asheville, Charlotte and Statesville are available to accept and file new lawsuits, pleadings, hold court proceedings and carry out the assigned duties and business of the court during the hours of 8:30 A.M. to 12:30 P.M. and 1:30 P.M. to 4:00 P.M., Monday through Friday.

As is the case in all of the federal trial courts, this court is authorized only to hear disputes that fall into the following four categories:

1. Those that deal with a question involving the United States Constitution;
2. Those that involve questions of federal -- as opposed to state-- law;
3. Those that involve the United States of America as a party, whether plaintiff or defendant; and,
4. Those that involve a dispute among residents of different states with an amount in controversy over \$75,000.00.

Your complaint must fall under one of these categories to be filed in federal court.

B. IS THERE AN ALTERNATIVE TO APPEARING PRO SE (REPRESENTING YOURSELF) THAT IS AFFORDABLE?

Most people who file and pursue litigation in the federal court employ a licensed attorney who practices law, has appeared in court, and is familiar with the rules of procedure that govern court process. If you would prefer to have an attorney to represent you, but you are unable to afford one, you should consider contacting the local bar association whose staff can explain the various options for obtaining and paying for legal services. Some bar associations, such as the Mecklenburg County Bar, have a lawyer referral service which can be contacted at Mecklenburg County Bar Lawyer Referral Service (telephone# 375-0120). Another service in the Charlotte area is the Legal Services of So. Piedmont (telephone# 376-1600).

If you cannot find an attorney to represent you, you have the right to pursue your claims in the court by appearing without representation or pro se, a Latin phrase that means "for yourself." Be aware that appearing as a pro se litigant, you are representing only yourself and presenting only your claims or defenses. Under the law, you cannot speak for another person, a company, or other entity such as a club or association that includes other individuals. When you appear pro se, **you must follow the same rules and procedures that licensed attorneys who practice in this court must follow.** Generally, judges hold pro se litigants to the same standards of professional responsibility as trained attorneys.

C. IF YOU PLAN TO REPRESENT YOURSELF, WHERE CAN YOU GO TO REVIEW THIS COURT'S RULES OF PROCEDURE AND APPLICABLE FEDERAL LAWS?

As a pro se litigant, you should be familiar with the appropriate sets of federal rules of procedure. These rules set forth the general procedural requirements for litigating cases in all federal courts. As a pro se litigant in a civil case, you should be familiar with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. If you are a pro se defendant in a criminal case, you

should be familiar with the Federal Rules of Criminal Procedure and Federal Rules of Evidence. Federal laws are located in the United States Code, which is abbreviated as "U.S.C." These rules and laws are available for review in the Charlotte area at the Mecklenburg County Law & Government Library located at 700 E. Trade St., Charlotte, NC, phone number: 704-348-1850, which is open Monday through Friday from 9:00 A.M. until 5:00 P.M. If you are located in either the Asheville or Statesville Divisions, you should contact your local public library for assistance in locating a copy of these rules and laws to review.

As a pro se litigant, you also should be familiar with the District Court Rules of Practice, a set commonly referred to as **local rules** that apply specifically to court proceedings in this court. The local rules cover the general procedure and flow of any action filed in the Western District of North Carolina.

The local rules can be reviewed at a public law library, and are located in the NC Rules of Court - Federal published by West Publishing or Annotated Rules of NC available in the NC Statutes published by Michie. The local rules are available for purchase in each of the Clerk's three staffed offices for a cost of \$10.00 or \$14.50 by mail. A set can also be downloaded from the Clerk's website at www.ncwd.uscourts.gov. The website can also be used to obtain forms, scanned documents, review case dockets and directions to all courthouses located within our district.

D. ARE THERE CERTAIN TYPES OF CASES IN WHICH LITIGANTS TYPICALLY REPRESENT THEMSELVES?

As noted earlier, a litigant may appear pro se in any case that is properly within the jurisdiction of this court. There are three (3) categories of cases that are most often filed by pro se litigants. They are as follows:

1. Cases alleging denial of civil rights under Title 42 United States Code, Section 1983;
2. Cases alleging employment discrimination under Title 42 United States Code, Section 2000(e); and

3. Cases filed by persons who are in jail or prison and who challenge their sentences or conditions of confinement.

E. HOW DO YOU START A NEW CASE?

FILE A COMPLAINT: The **plaintiff** or person bringing the lawsuit to court files a **complaint**. The complaint can be filed by hand-delivering it or mailing it to any of the staffed divisional offices in this district. The addresses and telephone numbers for each of the staffed divisional offices are listed as follows:

U. S. District Court Clerk, Western District of North Carolina, Asheville Division,
100 Otis St., Rm. 309, Asheville, NC 28801, (828) 771-7200

U.S. District Court Clerk, Western District of North Carolina, Charlotte Division,
401 W. Trade St., Rm. 216, Charlotte, NC 28202, (704) 350-7400

U.S. District Court Clerk, Western District of North Carolina, Statesville Division,
200 W. Broad St., Rm. 100, Statesville, NC 28677, (704) 883-1000.

The case will be filed and assigned to the correct divisional office regardless of which staffed office the complaint is filed. This case assignment is determined in the Western District of North Carolina as stated previously in Section I and is based on the defendant or defendants' county of residence or the place where the incident is alleged to have occurred.

Whether you deliver or mail your complaint to the court, you must submit:

- 1) An original and one complete copy of the complaint;
- 2) A completed cover sheet, a copy of which can be obtained from the clerk's office; and
- 3) The \$150.00 filing fee (unless you are proceeding *in forma pauperis* as discussed in Sections I(G) and V of this guide). The complaint outlines a problem or reason for the suit, also known as a **cause of action**. This complaint is given a case number and assigned to a district judge or magistrate judge.

SERVE THE COMPLAINT: Each **defendant** or person whom the plaintiff

claims is responsible for the problem must be notified of the lawsuit through a process that is specified under law. The responsibility for notifying each defendant rests with the plaintiff and is referred to as **service of process**. The provisions for service of process are described in **Rule 4** of the **Federal Rules of Civil Procedure**. If these service of process requirements are not followed correctly, the case can be dismissed for failure to effect proper service of process.

The defendant(s) can be notified by service of a **summons**. You can obtain the standard summons form from the clerk's office or the Clerk's website at **www.ncwd.uscourts.gov**. After you complete this summons form, staff of the clerk's office officially **issue** the summons; this means that an authorized court employee will sign the form and emboss it with the official seal of the court. The summons and complaint are then served on the defendant.

Detailed provisions on how to serve the defendant are contained in **Rule 4** of the **Federal Rules of Civil Procedure**. You should carefully review the rule to make sure that you are familiar with those provisions. The service of process requirements can be satisfied in one of four ways.

1. **Personal Service:** Here you direct someone else to deliver or serve a copy of the complaint and summons on the defendant(s). Such service can be performed by anyone who is over eighteen years of age and who is not a party in the case. Constables and private process servers will do this for a fee. The person who serves the summons must record on the back of the summons form his or her name, the name of the person who was served, and the date and time of service. This section of the summons form is referred to as the **return of service**, and if it is not completed, service of process is not complete. Rule 4 requires confirmation that service has been completed. Such confirmation or **proof** that the documents have been served on the defendant requires that the original summons form with the return of service completed be returned to the court and that a copy of the form be left with the defendant. Another copy of this return of service should be retained by you for your records.
2. **Waiver of Service:** Rule 4 permits a defendant to **waive** service of process. That means the defendant agrees to respond to your complaint without being served with it. The clerk's office can provide you with a waiver form

that you can mail to the defendant along with a copy of your complaint. If the defendant completes and returns the waiver, you will be spared the burden of service. If you use this form of service, you should file a copy of your request to the defendant for waiver with the clerk's office. If the waiver is then signed by the defendant and returned to you, the original signed waiver form should be filed with the clerk's office to indicate that the complaint has been served. Another copy of this waiver should be retained by you for your records.

3. **Service by Mail:** Rule 4 permits that the laws of the State in which the district is located govern service of process. The laws of the State of North Carolina permit for service of process by certified or registered mail. This means that you may mail a copy of the summons and complaint to each named defendant by registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee. This service is governed by the North Carolina Rules of Civil Procedure, Rule 4(j)(1)(c). When you receive the receipt card indicating that the defendant(s) has received your complaint, the receipt card should be attached to a copy of the summons for each defendant and filed with the clerk's office. Another copy of each returned receipt card and summons should be retained by you for your records.
4. **Service by the U.S. Marshal:** If a judge approves your application to proceed in forma pauperis (waiver of the requirement to pay the \$150.00 case filing fee as described in Section V of this Guide), the court will generally direct process to issue and provide for service by the U.S. Marshal, if your case has been determined to have substance or merit.

After you file your complaint with the clerk's office, you have 120 days to serve a copy of it and the summons on the defendant(s). It is your responsibility to effect service; if you fail to do so within the 120 days, your case may be dismissed.

File and Serve the Response: Once the defendant(s) has been served with a copy of the complaint, the defendant(s) must file with the court an **answer** or some other response within the specified number of days. Under the rules governing service of process, each defendant is required to provide a copy of the response on the plaintiff.

Once each defendant has filed a response, the case is considered **at issue**.

F. WHAT HAPPENS WHEN A CASE IS AT ISSUE?

Local Rule (LR) 16.1 governs the pretrial conference procedures for this district. You and the other represented parties are required to confer as provided by Federal Rule of Civil Procedure 26(f) and file a proposed discovery plan within five (5) days of the conference which shall serve as a guideline for the court in issuing a scheduling order. Once the discovery plan has been filed the assigned judge will enter a **Pretrial Order** unless the parties request a pretrial conference with the court. If requested, the pretrial conference should be held within twelve (12) days of the filing of the discovery plan (LR16.1(b)). Once the scheduling order is in place then the case may proceed in accordance with the deadlines established within the order and the Federal Rules of Civil Procedure.

CIVIL CASES ASSIGNED TO A DISTRICT JUDGE

If your case is assigned to a district judge, then under the authority of Local Rule (LR) 72.1, it could be **referred to a magistrate judge** for assistance in managing it. All subsequent court proceedings may be conducted before that magistrate judge. You have the opportunity to **consent to jurisdiction** of the magistrate judge to manage and hear all proceedings on your case including final disposition of your claims. At case opening, a package will be provided to you which will contain a form entitled “Consent To Proceed Before A Magistrate Judge/Refusal To Consent To Proceed Before A Magistrate Judge.” The case will be reassigned to a magistrate judge **only if all parties consent**.

CIVIL CASES ASSIGNED TO A MAGISTRATE JUDGE

If your case is assigned to a magistrate judge, you have the opportunity to **consent to jurisdiction** of the magistrate judge to manage and hear all proceedings on your case including final disposition of your claims. You also have the opportunity to **refuse** the assignment of the case to a magistrate judge and request reassignment of the case to a district judge. At case opening, a package will be provided to you which will contain a form entitled “Consent To Proceed Before A Magistrate Judge/Refusal To Consent To Proceed Before A Magistrate Judge.”

This consent or refusal form should be served on all defendants along with the service of the Summons and Complaint as set forth in LR 73.1. The Plaintiff should execute and file his/her copy of this form before seeking service of the Summons and Complaint on the defendant(s) (Refer to LR 73.1.) If at the time the Initial Pretrial Conference (IPC) is held, it is noted that the consent/refusal forms have not been filed by all parties, the matter will be discussed at the IPC.

Filing of Motions and Objections: Either party -- the plaintiff or defendant -- may request that the court take specific action related to the case. To do so, the party prepares a formal request or what is referred to as a **motion**. Motion practice is governed by Rule 7 of the Federal Rules of Civil Procedure along with LR 7.1. The party must sign the motion, submit or **file** it, **along with one complete copy** to the clerk of court. A copy of the motion must also be sent to the opposing party or party's attorney. The opposing party may file with the clerk of court, an **opposition or response** to the motion. This response sets forth the opposing party's reasons why the court should deny rather than grant the motion.

The time within which to respond or reply to motions is set out in LR 7.1. The deadline for the filing of all motions within a civil action is generally set out in the Pretrial Order.

Motion Review: The district or magistrate judge may schedule hearings or decide or rule on the motion without a hearing by issuing a written order that either grants, denies, or partially grants and partially denies what the motion sought.

Dispositive vs. Nondispositive Motions: Motions fall into two (2) broad

categories: dispositive and nondispositive. **Dispositive** motions, if granted, dispose of the case; **nondispositive** motions, if granted, affect the case but do not dispose of it. District judges have the authority to rule on both kinds of motions; magistrate judges are authorized to rule only on nondispositive motions on cases **referred to them by district judges**. If the parties have **consented to jurisdiction** of the magistrate judge as the **presiding judge** (*the judge to whom the case is assigned*), then the magistrate judge has full authority to rule on both kinds of motions the same as a district judge.

Magistrate Judge Report & Recommendation: In cases **referred** to a magistrate judge and one of the parties files a dispositive motion, the magistrate judge is authorized to prepare a written **report & recommendation**, essentially a recommendation that the motion be either granted or denied and stating the reason why. This report and recommendation then is forwarded to the district judge assigned to the case, and copies are mailed to the parties. As a party, you have a certain number of days within which to file objections to the report and recommendation. All objections that are received within the specified time are forwarded to the district judge. The district judge reviews the report and recommendation and any objections that have been filed. The district judge then will issue an order that adopts, rejects, or adopts in part and rejects in part the magistrate judge's report and recommendation. Where the judge's order dismisses the complaint and the cause of action, the clerk of court will prepare and enter a **judgment** in the case. Such judgement is final and can be appealed only to the United States Court of Appeals for the Fourth Circuit located in Richmond, VA.

G. WHAT COURT FEES AND COSTS ARE YOU REQUIRED TO PAY?

The fee for filing a complaint and opening a civil case in any U.S. District court is \$150.00. This may be paid by cash or check. A list of the fees charged by the court for various services and materials is attached to this Guide. If you are unable to pay the filing fee, you may apply for permission to proceed *in forma pauperis*, which is Latin for "in the form of a pauper." Information on filing *in forma pauperis* is located in Section V of this guide. An application form for filing *in forma pauperis* is available at each of the Clerk's offices or from the website at www.ncwd.uscourts.gov. Completed applications are forwarded to either the **Pro Se Law Clerk** or a magistrate judge for review. If your application is denied by the judge, your case cannot be opened until you pay the filing fee.

Waiver of the filing fee by the court **does not automatically waive the other costs associated with pursuing or litigating your case.** If, for example, you need copies of original documents in your case file, the clerk's office is required to charge the standard rate of \$.50 per page. Other expenses you will incur include the costs of (1) preparing the original and copies of papers you file with the court, and (2) mailing or hand-delivering a copy of each paper to the opposing party to satisfy the requirements of service.

H. HOW DO YOU SUBMIT DOCUMENTS TO THE COURT?

Case-related documents that ask the court to take specific action are referred to as **motions or pleadings**. If, for example, you want to ask the court to take an action, such as appointing an attorney, you must do so by means of written motion. A motion should be supported by a summary of the law supporting the motion called a **memorandum** and/or by an affidavit or declaration of the movant that provide the court with facts that support the granting of the motions (see LR 7.2). In preparing motions, you should be as specific as possible about the order or action you would like the court to take.

As a matter of policy, **the court requires parties to submit or file an original and one copy of all motions or pleadings with the clerk of court.** Staff of the clerk's office stamp both, then place the original in the case file and give the copy to the assigned judge for review and analysis. Parties may file pleadings with the court in person or by mail. For purposes of filing in person, the three staffed offices of this district and their addresses are found in Section I (E), Pg. 6 of this Guide. The offices are open to the public from 8:30 A.M. to 12:30 P.M. and 1:30 P.M. to 4:00 P.M., Monday through Friday, except on federal holidays. All Clerk's Office locations have in place a 24 hour drop box located in each of the courthouses. Instructions are provided at the site of each of the drop boxes.

You should retain for your own use a copy of all pleadings and other documents you file with the court. When you file pleadings in person, plan to bring your personal copy with you so staff of the clerk's office can stamp it. By doing so, your records will reflect the filing date of the original. If you mail your pleading and wish to have your copy stamped, you should enclose a third copy and a self-addressed, stamped envelope. The clerk's office will return your copy stamped by the court.

Note: When you submit a pleading to the court, you also must mail or deliver a copy of the pleading to the defendant's attorney, or if the defendant has no attorney, to the defendant. At the end of your pleading, you must include a **certificate of service** that states the date that you mailed or delivered a copy of the pleading to the defendant. A sample form for a certificate of service is attached to this Guide.

I. HOW DO YOU OBTAIN INFORMATION ABOUT THE STATUS AND PROGRESS OF YOUR CASE?

The clerk's office maintains an automated record or **docket** for every case. This docket is a chronological summary of all significant events in the history of the case. For example, each time you file a pleading or appear for a hearing, an entry summarizing the event is added to the case docket. You may review the docket on the public access terminal located in the clerk's office. Alternatively, if you have a personal computer with access to the internet you can review your case docket on our website at www.ncwd.uscourts.gov using a program called WEB PACER. Information is provided as to the charges and how to obtain a Web Pacer Login when you select the WEB PACER option on the court's website. If you wish to have a paper copy of your docket prepared for you, staff of the clerk's office will provide it for your at \$.50 per page or the docket is available on the court's website. Staff of the clerk's office also can provide you with basic docket information over the telephone.

It is important that you realize that staff of the clerk's office do not know and cannot provide you with the reasons for a judge's decision. Nor is the clerk's office in a position to know when a judge will respond to a motion or issue a ruling in a case. Deputy clerks are not attorneys and they are prohibited from giving any legal advice.

J. IS IT POSSIBLE FOR YOU TO SPEAK DIRECTLY TO A JUDGE OR MEMBER OF HIS PERSONAL STAFF ABOUT YOUR CASE?

As a party appearing pro se, you are prohibited from all private or **ex parte** communication with the judge to whom your case is assigned. Ex parte communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (1) without the opposing party being present or (2) without the knowledge and consent of the opposing party. With few exceptions, because of this prohibition a judge will refuse to speak or otherwise communicate ex parte with any party to a case that is assigned to him. Any communication

between the assigned judge and a pro se litigant should be in writing, and copy of the communication should be sent either to the opposing party or that party's attorney. For example, a party appearing pro se should send to the opposing party a copy of any letter sent to the judge. Moreover, the letter to the judge should indicate that a copy has been sent to the opposing party. (Federal Rules of Civil Procedure (FRCP), Rule 5(d)).

SECTION II

PROCEDURE FOR FILING A CIVIL RIGHTS ACTION UNDER TITLE 42 UNITED STATES CODE SECTIONS 1983 AND 1985:

One type of action frequently filed by pro se litigants is alleged denial or violation of an individual's civil rights. In a civil rights complaint, a pro se plaintiff is alleging that his or her constitutional rights or privileges or immunities have been violated. The federal law under which a civil rights claim arises is 42 U.S.C. Sections 1983 and 1985.

As noted earlier in this Guide to file an action in this court you first must prepare a complaint. Most complaints filed by pro se litigants involve alleged violations of civil rights. To assist pro se litigants with the process of filing a federal civil rights complaint, the clerk's office has prepared an information packet called **Information for Filing a Civil Right Complaint Under 42 United States Code Sections 1983 and 1985**. That packet includes a sample complaint form that you should use as a guide when you prepare your complaint; the packet is available at the clerk's office. Your complaint should be either typed or handwritten. In either case, you should make certain that your complaint is legible and can be easily read by the judge.

SECTION III

ACTIONS BROUGHT BY PRISONERS APPEARING PRO SE

Persons who are confined or **incarcerated** in a jail or a prison occasionally file *pro se* actions with the court. These actions fall into three general categories.

A. Appeal of Sentence: This is a criminal action in which a prisoner submits an appeal to have a higher or superior court review the punishment or **sentence** that the trial court imposed. If a person was sentenced by a judge from the United States District Court for the Western District of North Carolina, an appeal is made to the United States Court of Appeals for the Fourth Circuit which is located in Richmond, Virginia. An appeal to the Fourth Circuit is made by filing a **notice of appeal** with the clerk of the court in any divisional offices located in Asheville, Charlotte or Statesville. Appeals to the Fourth Circuit are governed by the **Federal Rules of Appellate Procedure**, which set forth specific time deadlines for filing an appeal. See Section I(C) for information on where you can review those rules.

B. Writ of *Habeas Corpus*: In this type of action, the prisoner applies or petitions this court for a writ of *habeas corpus*; this is, in essence, an action that challenges the constitutionality of the confinement and seeks to have the sentence vacated, or dismissed.

Both of these actions are established by federal law. If you are in state custody, having been sentenced by a state court judge, you may file a petition under 28 U.S.C. 2254 . If, alternatively, you are in federal custody, having been sentenced by a federal judge, you may file a motion to vacate sentence under 28 U.S.C. 2255. The office of the clerk has prepared separate information packets, complete with the required forms, for these two types of actions. To obtain a copy of either packet, you should contact the office of the clerk. ***Note: Section 2254 and 2255 proceedings are governed by special rules called Rules Governing Section 2254 and 2255 Proceedings. It is the petitioner's responsibility to become familiar with those rules. See Section I(C) for information on where you can find those rules.***

C. Prisoner Civil Rights: In this type of action, a prisoner challenges the conditions of confinement, or the way he or she is being treated in prison or jail. This type of action generally takes the form of a civil rights complaint. If you wish to file a civil rights complaint, you should ask the clerk's office for a copy of the information packet called **Instructions For Filing A Complaint Under The**

Civil Rights Act 42 U.S.C. Section 1983/Prisoner Litigation. That packet includes a sample complaint form that you should use as a guide when you prepare your complaint.

SECTION IV EMPLOYMENT DISCRIMINATION CASES

Another type of action filed by *pro se* litigants is alleged employment discrimination. Prior to filing an employment discrimination complaint in the federal court, the plaintiff is required to follow specific administrative procedures. *Note: This is not a complete statement of the law on administrative procedures to follow in an employment discrimination case. The procedures are complicated and it is the pro se litigant's responsibility to make sure that all procedures are followed correctly and within the applicable time limit. If the requirements are not followed, your case may be dismissed.*

A. PROCEDURES TO FOLLOW BEFORE THE COMPLAINT IS FILED:

If you wish to file an employment discrimination case in this court, you must file your charges with the Equal Employment Opportunity Commission (EEOC). In most cases after review of your charges, and barring complications, the EEOC will issue to you a **Notice of Right to Sue** indicating that (i) the administrative process has been completed, and (ii) no further action will be taken on behalf of the EEOC. Once this notice is issued, you have a limited time period within which to file your lawsuit; failure to file a complaint in that time period will result in having your cause of action dismissed by this court. A Notice of right to sue is not issued where the charges allege employment discrimination based on age. However, not having such a notice will not prevent you from filing an employment discrimination complaint based on age.

The Notice of Right to Sue will indicate that you, as the litigant, have the right to request the court to appoint an attorney to represent you if, for financial reasons, you are unable to retain your own attorney. **You should bear in mind that in this court, a request for appointment of an attorney will be considered only after a complaint has been filed and is pending before the court.** Presently, there are no federal funds available for appointment of counsel in civil matters.

B. PREPARING THE COMPLAINT: To assist a party appearing *pro se* in filing an employment discrimination complaint, the office of the clerk has

prepared an information packet called **Information on Filing an Employment Discrimination Complaint**. The packet is available at the clerk's office. The packet includes a sample complaint form to assist you in filing an employment discrimination complaint. You should make certain that your complaint is legible and can be easily read by the judge.

SECTION V

APPLICATION TO PROCEED *IN FORMA PAUPERIS*

As is noted earlier in this Guide, filing a case in this court requires the plaintiff to pay a \$150.00 filing fee at the time the new case is filed. If you are unable to pay this fee, you may apply to have payment of the fee waived. You can apply for waiver of the fee only when your complaint accompanies the waiver application. Your waiver application will be **filed**-stamped and the complaint form will be **received**-stamped until such time as a ruling granting the waiver application is made.

WAIVER APPLICATION DENIED IN ITS ENTIRETY: If a judge subsequently denies your waiver application in its entirety, you will be required to pay the \$150.00 filing fee. A copy of the judge's order will be mailed to you. When the filing fee is paid to the court, a copy of the complaint or a cover letter indicating the case number assigned must accompany the fee.

WAIVER APPLICATION DENIED IN PART - PORTION OF FILING FEE ORDERED PAID: If the judge orders that a portion of the filing fee must be paid within a specified period of time, your complaint will be **filed**-stamped and docketed. If the portion of the filing fee is not paid by the court's deadline, then your case will be dismissed.

The application process requires that you complete and submit an **Application to Proceed *in Forma Pauperis***. This application is available at each of the Clerk's offices or from our website at www.ncwd.uscourts.gov. Brief instructions for completing the application are as follows.

At the top of the application, you must note the name of the case **caption:** The case name consists of your name as the plaintiff above the **v.** and the name(s) of the defendant(s) below the **v.** Staff in the clerk's office will provide the case number.

You must answer all questions truthfully and completely. If you own real estate or automobiles that have outstanding mortgages or loans, you should be very specific about your debt balance so the district judge who reviews the application has accurate information as to the property's value. You also must sign the statement under penalty of perjury.

The completed application form should be submitted to the clerk's office. Staff there will transmit it with the complaint to the *Pro Se Law Clerk* who will review the application for the assigned judge. If the application is granted, it will be returned to the clerk's office for subsequent processing. In the event the application is not approved, it will be processed as noted earlier. It will either be returned to you along with your complaint if denied in its entirety or filed-stamped and docketed pending the payment of a portion of the filing fee by a specific date.

FEE SCHEDULE

COURT FEE SCHEDULE

(28 U.S.C. Section 1914)

**Fees to be charged for services performed by clerks of the district courts
(except that no fees are to be charged for services rendered on behalf of the
United States).**

1. Civil Case Filing Fee: \$150.00
2. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid (miscellaneous case): \$39.00
3. Notice of Appeal to the Fourth Circuit Court of Appeals: \$255.00
4. Notice of Appeal to the District Court from a Magistrate Judge misdemeanor conviction: \$32.00
5. Records Search: \$26.00 per name or item searched.
6. Certification of any document or paper : \$9.00
Exemplification of any document or paper: \$18.00 (*This includes the certification of the exemplified document.*)
7. Photocopies: \$.50 per page.
8. For reproduction of magnetic tape recordings, either cassette or reel-to-reel: \$26.00 including the cost of materials.
9. For transcribing a record of any proceeding by a regularly employed member of the court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters.
10. For each microfiche sheet of film or microfilm jacket copy of any court record, where available: \$5.00.
11. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court: \$45.00.
12. For a check paid into the court which is returned for lack of funds: \$45.00
13. For admission of attorneys to practice: \$250.00, for certificate of good standing: \$15.00, Duplicate attorney admission certificates: \$15.00
Pro Hac Vice Admission \$100.00 for each application granted (LR 83.1)
14. The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.
15. The clerk shall assess a charge of up to three percent for the handling of registry funds, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.
16. For filing an action brought under Title III of the Cuban Liberty & Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. § 785 (1996), \$5,431.00. (This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.)
17. Other Fees pursuant to 28 U.S.C. §1821: Witness Fee \$40.00 a day. Mileage .360 cents a mile round trip.

Form

Certificate Of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing _____
(name of pleading)

was mailed/delivered to _____
(name of defendant(s) or defendant's attorney)

at _____ (Address)

on _____, _____.
(Date)